

AGP-13. ADVANCE PAYMENTS

(a) Notwithstanding any provisions in the Article of this Contract entitled "Allowable Cost and Payment," to the contrary, advance payments will be made to the Contractor as stated herein.

(b) General Requirements.

(1) Request for Advance Payment. Subject to the conditions hereinafter set forth, the Institute will make an advance payment, or advance payments from time to time, to the Contractor. No advance payment will be made:

(A) Without the approval of JPL as to the financial necessity therefor;

(B) In an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (4) below; and

(C) Without a properly certified invoice or invoices.

(2) Amount of Advance Payment.

(A) The Contractor shall determine the estimated amount of advance payment necessary to meet the requirements of paragraph (5) hereof entitled "Use of Funds" to cover performance of the Contract. This determination shall be pursuant to written instructions provided by JPL relative to the:

(i) Shortest practical period for which advance payments will be provided;

(ii) Format and frequency of requests for advance payments; and

(iii) Data required in support of each request.

(B) The estimate will be adjusted by the amount which actual cash expenditures for prior performance periods of the Contract exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a "Statement of Contractor's Request for Advance Payment" to JPL in writing. The request must be submitted sufficiently early to permit review, approval and disbursement of the required advance payment by the time the funds are actually needed by the Contractor.

(3) Payment Method. Advance payments by check will be made in accordance with the provisions of paragraphs (B) and (C) below:

(A) JPL reserves the right to redetermine the payment method to be used. Upon such redetermination, JPL will unilaterally amend this Contract and notify the Contractor in writing 45 days prior to the effective date of the change in the method of payments.

(B) JPL will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if JPL concurs, the "Statement of Contractor's Request for Advance Payment" and/or invoice will be approved for payment. If JPL determines that the advance payment requested by the Contractor is in excess of cash requirements for Contract performance during the specified period of time, JPL will approve a reduced amount. Upon such reduction, JPL will notify the Contractor of the amount requested, the amount approved, and the reasons for reduction.

(C) The Institute will issue a check to the Contractor for the amount authorized by JPL and mail such check to the Contractor in time to be received on or about the date the funds are required for Contract performance.

(4) Amount of Advance and Other Payments. In no instance will the total payments provided under the Contract as modified exceed the funds then allocated to the Contract and subject to the Articles of this Contract entitled "Limitation of Cost" or "Limitation of Funds," less any amount of withholding provided for by the Contract.

- (5) Use of Funds. The advance payments provided shall be used by the Contractor solely for the purpose of making payments for items of allowable costs allocable to this Contract, pursuant to FAR Part 31, and any corresponding implementing or supplementing provisions in the NFS, or to reimburse the Contractor for such items of cost, and for such other purposes as JPL may approve in writing. The Contractor shall not make advance payments to its subcontractors.
- (6) Return of Funds. The Contractor may at any time repay all or any part of funds obtained by advance payments. When requested in writing by JPL, the Contractor shall repay to the Institute such amount of the balance of advance payments as JPL deems to be in excess of the Contractor's current needs.
- (7) Termination of Advance Payments. If the Contractor demonstrates an unwillingness or inability to establish procedures or follow the invoicing procedures provided in form JPL 2893, "Advance Payment Invoice Procedure - CREI Contracts," attached to this Contract, JPL may require immediate repayment to the Institute of the unliquidated balance of advance payments and unilaterally amend this Contract to prescribe an appropriate payment clause that will be applicable thereafter.
- (8) Liquidation. If, upon completion or termination of this Contract, all advance payments obtained by the Contractor have not been fully liquidated by authorized charges under the Contract, the unliquidated balance shall be deducted from any sums due to the Contractor from the Institute and any excess funds shall be repaid by the Contractor to the Institute upon demand.
- (9) Lien on Property Under Contract.
 - (A) Any and all advance payments made under this Contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this Contract and on all material and other property acquired for or allocated to the performance of this Contract, except to the extent that the Government by virtue of any other provision of this Contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregating all property which is subject to a lien in favor of the Government by virtue of any provision of this Contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this Contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this Contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records.
 - (B) If, at any time during the progress of the work on the Contract, it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt in duplicate, acknowledging the existence of such lien. A copy of each receipt shall be delivered by the Contractor to JPL. If this Contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this Contract, such sale or retention shall be made only if approved by JPL, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.
- (10) Default Provisions. If any of the events of default under paragraph (A) occurs, the Institute without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further payments on this Contract.
 - (A) Events of default include:
 - (i) A finding by JPL that the Contractor:

- a. Has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this Contract;
 - b. Has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this Contract;
 - c. Has allocated inventory to this Contract substantially exceeding reasonable requirements; or
 - d. Is delinquent in payment of taxes or of the costs of performance of this Contract in the ordinary course of business.
 - (ii) Termination of this Contract by reason of fault of the Contractor; and
 - (iii) The commission of an act of bankruptcy (appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor).
- (B) Upon the continuance of any such events of default for a period of 30 days after such written notice to the Contractor, the Institute may, in its discretion, take the following additional actions as it may deem appropriate under the circumstances:
- (i) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97;
 - (ii) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or
 - (iii) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at private sale, all or any part of the property on which the Government has a lien under this Contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Institute against the Contractor.
- (11) **Prohibition Against Assignment.** Notwithstanding any other provisions of this Contract, the Contractor shall not transfer, pledge, or otherwise assign this Contract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.
- (12) **Information-Access to Records.** The Contractor shall furnish to JPL such information concerning the financial operation of the Contractor's business as may be requested. The Contractor shall afford to JPL or its representative proper facilities for inspection of the Contractor's books, records and accounts, at all reasonable times until the expiration of three years from the date of final payment under this Contract.
- (13) **Other Security.** The terms of this Contract shall be considered adequate security for advance payments hereunder, except that if at any time JPL deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to JPL, to the extent that such additional security is available.
- (c) Method of Payment. JPL will make advance payments to the Contractor in accordance with the General Requirements set forth above and as herein detailed:
- (1) Within 10 working days after receipt of a fully executed copy of the Contract or Contract Modification incorporating this Article, the Contractor shall prepare and submit to JPL, pursuant to paragraph (b)(2)(B) above, the original and three copies each of two separate invoices in a format to be provided by JPL for each of the first two advance payment periods. The first period is from the date of the Contract or Contract Modification incorporating this Article through the first full calendar month. The second period is for the second succeeding full calendar month. The Contractor shall forward to JPL not later than the twentieth day of the first full month, an invoice for the third period. Beginning with the invoice for the fourth period, to be submitted not later than the twentieth day of the second full month, and each month thereafter, the Contractor shall forward to JPL an original and three copies of an invoice along with a

"Statement of Contractor's Request for Advance Payment," in accordance with paragraph (b)(2)(B) above, in a format to be provided by JPL in accordance with paragraph (b)(2)(A) above. The Contractor shall liquidate the first advance payment on the invoice for the fourth advance payment request, submitted not later than the twentieth day of the second full month, and shall continue to liquidate advances in sequence against each subsequent advance request. The Institute will issue a check in the amount approved by JPL, to be received by the Contractor not later than the first day of the month for which advance payment was requested, except for the final month or months of Contract performance during which time any advance payments, then outstanding, will be liquidated. The Contractor shall continue to furnish to JPL each month a "Statement of Contractor's Request for Advance Payment," which will indicate the amount of Advance Payments being liquidated.

- (2) Within 10 working days after receipt of the Contractor's first and second period advance payment invoices, the Institute will make its best effort to forward a check to the Contractor in the JPL-approved amount for the first advance payment requested. The Institute will forward a check to the Contractor for the second period advance payment and each payment thereafter, in the JPL approved amount, so as to be received by the Contractor not later than the first day of the month, for which the advance payment is being made.